

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1318 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

ABDUL HAQ ABDUL REHMAN CHHIPA

Versus

HIRALAL, COMMISSIONER OF POLICE

Appearance:

MR MIG MANSURI for Petitioner

Ms HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 23rd November, 1998, made by the

Commissioner of Police, Ahmedabad City, under the powers conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'bootlegger' within the meaning of Section 2 (b) of the Act. Two offences punishable under the Bombay Prohibition Act have been registered against the petitioner on 18th November, 1998 and 19th November, 1998 respectively. Both the said offences are pending investigation. On 21st November, 1998, two persons have given statements in respect of the nefarious activities carried on by the petitioner and its alleged adverse effect on the public order. It is also alleged that the petitioner carries deadly weapons with him.

4. Amongst other grounds, Mr. Mansuri has also contended that soon after the petitioner's arrest on 19th November, 1998, in respect of the above referred offences, the above referred statements have been recorded by the Police Inspector, the same have been verified by the detaining authority on 22nd November, 1998 and immediately on 23rd November, 1998, the impugned order has been made. The want of application of mind in respect of the said statements is manifest from the above referred events. He has submitted that the detaining authority has relied upon the said statements without examining the credibility of the witnesses and the genuineness of the statements made by them. Upon perusal of the records, it appears that the statements were recorded by the Police Inspector on 21st November, 1998, and the same were verified by the detaining authority on 22nd November, 1998 i.e., on the next day. This apparently leaves no time for the police to investigate the genuineness of the said statements. Moreover, the detaining authority has not recorded his subjective satisfaction in this respect nor has he relied upon any other contemporaneous evidence. Undoubtedly, the detaining authority in his affidavit has stated that he had verified the genuineness of the statements given by the concerned witnesses. However, the statement is not supported by the evidence on record. It appears that the only verification which has been made by the detaining authority is in respect of the fear expressed by the said witnesses. Hence, in absence of any evidence on record, to me, it appears that the detaining authority has relied upon the statements of witnesses without applying his mind in respect of the credibility of the witnesses and the genuineness of the statements given by them. The subjective satisfaction recorded by the detaining

authority is, therefore, vitiated and the consequential order of detention is invalid.

5. Petition is, therefore, allowed. The order dated 23rd November, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

Prakash*